

DOCKET NO. MMX-CV23-5016232-S

CONNECTICUT STATE POLICE,	:	SUPERIOR COURT
UNION, INC.	:	
<i>Plaintiff,</i>	:	
	:	JUDICIAL DISTRICT OF MIDDLETOWN
v.	:	AT MIDDLETOWN
	:	
CONNECTICUT DEPARTMENT OF	:	
EMERGENCY SERVICES AND PUBLIC	:	
PROTECTION, <i>et al.</i> ,	:	
<i>Defendants.</i>	:	SEPTEMBER 1, 2023

**DEFENDANTS' MEMORANDUM OF LAW REGARDING THE COURT'S SUBJECT  
MATTER JURISDICTION**

Pursuant to the Court's order of August 28, 2023, the Defendants, Connecticut Department of Emergency Services and Public Protection and University of Connecticut Institute of Municipal and Regional Policy, file this short memorandum addressing the court's jurisdiction over the plaintiff's claims. As discussed below, this court lacks subject matter jurisdiction to entertain plaintiff's claims or provide the relief sought in this action. Specifically, the court lacks jurisdiction, in the first instance, to adjudicate questions regarding the disclosure of putative public records and objections to the release thereof. The legislature has charged the Freedom of Information Commission with this responsibility under Conn. Gen. Stat. § 1-200, et seq., where, as here, a complaint seeking disclosure of the records at issue has been filed with the Commission. *See*, Ex. A to FOIC's Motion to Intervene (Doc. No. 104.00).

Admittedly, case law on this issue is sparse. However, the legislature has clearly and unambiguously charged the FOIC with the duty and authority to adjudicate the release of public records, as shown in § 1-205(d):

The commission shall, subject to the provisions of the Freedom of Information Act promptly review the alleged violation of said Freedom of Information Act and issue an order pertaining to the same. Said commission shall have the power to investigate all alleged violations of said Freedom of Information Act and may for the purpose of investigating any violation hold a

hearing, administer oaths, examine witnesses, receive oral and documentary evidence, have the power to subpoena witnesses under procedural rules adopted by the commission to compel attendance and to require the production for examination of any books and papers which the commission deems relevant in any matter under investigation or in question.

Conn. Gen. Stat. § 1-205(d). Government agency denials of access to public records are appealable to the FOIC, subject to a hearing procedure established by the legislature in the Freedom of Information Act and further described in regulations promulgated thereunder. See, e.g., Conn. Gen. Stat. § 1-206; CT Regs State Agencies §§ 1-21j-1, et seq. At the same time, the legislature has reserved to the courts, consistent with the Uniform Administrative Procedures Act, the authority to conduct appellate review of the decisions of the FOIC, as such decisions are contested cases within the meaning of the UAPA. See Conn. Gen. Stat. §§ 1-206(d) and 4-183.

The Superior Court authority cited by the intervenors is consistent with this statutory framework. In *State v. Laird*, HHB CR-17-0286775 and *State v. Cruz*, HHB CR-17-0286774, the trial court made clear the limits of its jurisdiction and deferred to the authority of the FOIC to adjudicate, again in the first instance, whether documents are public records within the meaning of the Freedom of Information Act, and if so, whether any of the statutory exemptions for release of same apply so as to preclude disclosure.

In sum, based on the clear statutory language cited above, and the pendency of a complaint before the FOIC related to the disclosure of the records that are the subject of this action, it is respectfully submitted that this court lacks subject matter jurisdiction over the claims in this case. Accordingly, this case should be dismissed, without prejudice to the parties to litigate their claims and defenses in the FOIC, and on appeal to the Superior Court pursuant to Conn. Gen. Stat. § 4-183, et seq., if appropriate.

DEFENDANTS  
Department of Emergency Services and  
Public Protection, Et Al.,

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**CERTIFICATION**

I certify that a copy of the above was delivered electronically on September 1, 2023 to all  
counsel and self-represented parties of record , including the following:

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